

President Grieco called the meeting to order at 1:45 p.m. on Wednesday, September 25, 2019 in the Emerald/Amethyst Rooms of the Suburban Collection Showcase.

Commissioners present:

David C. Anderson
Dennis M. Barnes, President-Elect
Joseph J. Baumann
Robert J. Buchanan, Vice President
Aaron V. Burrell
B.D. "Chris" Christenson
Richard L. Cunningham
Syeda F. Davidson
Josephine A. DeLorenzo
Hon. Shauna L. Dunning
Andrew F. Fink III
Jennifer M. Grieco, President
Lisa J. Hamameh
Kara R. Hart-Negrich

Edward L. Haroutunian
James W. Heath, Treasurer
Michael S. Hohaus
Thomas H. Howlett
Joseph P. McGill
Valerie R. Newman
Hon. David A. Perkins
Daniel D. Quick
Victoria A. Radke
Chelsea M. Rebeck
Gregory L. Ulrich
Dana M. Warnez, Secretary
Erane C. Washington
Ryan Zemke

Commissioners absent and excused:

Danielle Mason Anderson
Hon. Clinton Canady III

E. Thomas McCarthy Jr.
Barry R. Powers

State Bar staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Jennifer Clark, Administrative/Clinical Assistant
Gregory Conyers, Director of Diversity
Candace Crowley, Senior Consultant
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Darin Day, Director of Outreach
Cliff Flood, General Counsel
Kathy Gardner, Unauthorized Practice of Law Counsel
Danon Goodrum-Garland, Director, Professional Services Division
Darin Day, Director of Outreach
Kathryn Hennessey, Public Policy Counsel
James Horsch, Director, Finance and Administration Division
Nkrumah Wynn Johnson, Assistant General Counsel
Molly Ranns, Case Monitor, Professional Standards Division
Alecia Ruswinckel, Assistant Division Director, Professional Standards Division
Carrie Sharlow, Administrative Assistant
Jeanette Socia, Human Resources Director
Kari Thrush, Assistant Director, Communications and Member Services Division
Anne Vrooman, Director of Research & Development

Guests

Jennifer Bentley, Executive Director, Michigan State Bar Foundation
Erika L. Butler
Susan Haroutunian
Sarah E. Kuchon
Suzanne C. Larsen
James W. Low
Nicholas M. Ohanesian
Samantha J. Orvis
Thomas G. Sinas
David Watson, Executive Director, ICLE
Mark A. Wisniewski

Consent Agenda

The Board received the minutes from the July 26, 2019 Board meeting.
The Board received the minutes from the July 16 and August 20, 2019 Executive Committee meetings.
The Board received the recent activities of the president.
The Board received the recent activities of the executive director.
The Board received the Client Protection Fund Claims.
The Board received the Unauthorized Practice of Law complaints.
The Board received the FY 2019 Financial Reports through July 2019.
The Board received the Model Criminal Jury Instructions.
The Board received a Health Care Law Section Bylaw Amendment

Ms. Grieco asked the Board if any items needed to be removed from the consent agenda.

A motion was offered and supported to approve the consent agenda. The motion was approved.

LEADERSHIP REPORTS

President's Report, Jennifer M. Grieco, President

Ms. Grieco welcomed the guests and new 2019-2020 commissioners in attendance. She reported that:

- the Task Force on State Bar Operations, Structure and Governance met with the consultants on September 10 to review the results of the survey and to discuss next steps. Ms. Grieco referred commissioners to "Lines of Inquiry" and asked them to review and provide any comments on these questions to Peter Cunningham. A short video from the consultants will be played during the RA meeting, which includes the Task Force's discussions to date. Commissioners will receive a link to the video to watch at their convenience.
- the Implicit Bias event for Commissioners, Section Chairs, and SBM staff on September 11 was a success. Ms. Welch added that the staff was grateful for being included. Mr. Conyers reported that materials from the session are forthcoming and will be distributed as soon as they become available.
- a meeting took place with the staff and leaders of local bar associations to update them on the constitutional challenges to integrated bars.

A motion was offered and seconded for the Board to go into a closed session to discuss a personnel matter. The motion was approved. The Board went into a closed session at 1:50 p.m. and returned to open session at 2:20 p.m.

Ms. Grieco recognized Mr. Flood's work as General Counsel of the State Bar for the past thirteen years and announced that the Board voted to hire Ms. Kathryn Hennessey, Public Policy Counsel, as General Counsel.

Executive Director's Report, Janet K. Welch, Executive Director

Ms. Welch reported that:

- the Task Force on Ethics and the Regulation of Legal Marketing continues to meet to address this challenging topic.
- the Professionalism Work Group has finalized its work product and it will be considered by the RA at its meeting tomorrow.
- the Michigan Supreme Court's Justice for All Committee continues its work.
- the online dues process is going relatively well. She recognized the staff who respond to members who experience challenges with the system.
- the hacking incident from last spring has been resolved. She recognized the team who worked on this issue, especially those who contacted those members affected, and Ms. Johnson-Wynn who led the legal work.
- she spoke at the International Society of Legal International conference in Edinburgh, Scotland on the role of legal regulators in access to justice.

Ms. Welch provided the Board with an overview of the major accomplishments of the State Bar of Michigan during FY 2019.

Representative Assembly (RA) Report, Richard L. Cunningham, Chairperson

Mr. Cunningham, reviewed the proposals on RA agenda, reminded the Board of Mr. Burrell's will be installation as Chair of the RA, and invited all to attend.

Young Lawyers Section (YLS) Report, Kara R. Hart-Negrich, Chairperson

Ms. Hart-Negrich provided the Board with an update on recent activities of the YLS.

COMMISSIONER COMMITTEES REPORTS

Finance Committee, James W. Heath, Chairperson

Mr. Heath reviewed the highlights of the FY 2019 financial reports through July 31, 2019.

Audit Committee

Mr. Heath reported that a conference call took place on Friday, September 20 to review and approve the proposed staff incentive compensation package and that the FY 2019 audit is in progress. This is the last year for the current auditing firm under SBM audit rotation policy. An RFP for a new auditing firm will go out for bid in January 2020.

Professional Standards, Dana M. Warnez, Chairperson
Proposed Amendments to Client Protection Fund (CPF) Rules and Proposed Rule 20 of the Rules Concerning the State Bar (SBR)

Ms. Warnez presented proposed amendments to proposed SBR 20. A motion was offered and supported to adopt the proposed revisions. The motion was approved.

Ms. Warnez presented proposed amendments to CPF Rule 9(B). A motion was offered and supported to adopt the proposed amendments. The motion was approved.

Ms. Warnez presented proposed amendments to CPF Rule 9(D)(9). A motion was offered and supported to adopt the proposed amendments. The motion was approved.

Ms. Warnez presented proposed amendments to CPF Rule 10(B)(6) and CPF Rule 11(I). A motion was offered and supported to adopt the proposed amendments. The motion was approved.

Ms. Warnez presented proposed amendments to CPF Rule 10(D). A motion was offered and supported to adopt the proposed amendments. The motion was approved.

Ms. Warnez presented proposed amendments of the CPF Rules to comport with current practices of the claims administration procedure and improve clarity of the Rules. A motion was offered and supported to adopt the proposed amendments. The motion was approved.

Ms. Warnez presented proposed amendments of the CPF Loss Policy. A motion was offered and supported to adopt the proposed amendment. The motion was approved.

Communications and Member Services, Robert J. Buchanan, Chairperson
Insurance Services

Mr. Buchanan presented the Board with an overview of the procedure taken and the committee's rationale in selecting MDA Insurance & Financial Group as the insurance provider for SBM attorneys. A motion was offered and supported for the State Bar of Michigan to contract with MDA Insurance & Financial Group as their exclusive insurance provider of term life, disability income, business overhead expense, hospital indemnity, accidental death and dismemberment, and dental. The motion was approved.

Public Policy, Dennis M. Barnes, Chairperson

Court Rules

ADM File 2018-36: Proposed Amendment of MCR 3.802

The proposed amendment of MCR 3.802 would eliminate references to the "noncustodial parent" to make the rule consistent with the statute (MCL 710.51) allowing stepparent adoption when the petitioning stepparent's spouse has custody according to a court order, rather than requiring sole legal custody.

A motion was offered and supported this proposed amendment. The motion was approved.

ADM File 2015-21: Amendments of MCR 3.965, 3.971, 3.972, 3.973, and 3.993

The amendments of MCR 3.965, 3.971, 3.972, 3.973, and 3.993 incorporate a requirement for a trial court to notify a respondent in a child protection proceeding of the right to appeal following a child's removal from the home and the initial dispositional order, and that failure to do so may bar respondent from later challenging the court's assumption of jurisdiction.

A motion was offered and supported to support the rule changes as a necessary first step in responding to the *In re Ferranti* decision; however, the board understands that SCAO has formed a workgroup with judges, court administrators, representatives from DHHS, and practitioners and supports that workgroup's efforts to further improve the rules, and recommends the changes recommended by the Civil Procedure & Courts Committee be incorporated into the rules. The motion was approved.

ADM File 2018-23: Proposed Alternative Amendments of MCR 6.610

The proposed alternative amendments of MCR 6.610 would allow discovery in misdemeanor proceedings in the district court. Alternative A would create a structure similar to the federal rules (FR Crim P 16[b]) in which a defendant's duty to provide certain discovery would be triggered only if defense counsel first requested discovery from the prosecution, and the prosecution complied. Alternative B is a proposal recommended by the Prosecuting Attorneys Association of Michigan in its comment on the original proposal published for comment in this file.

A motion was offered and supported to support Alternative A and to continue to urge the Court to assist with funding to carry out these orders. The motion was approved.

ADM File 2019-02: Proposed Amendment of MCR 9.123

The proposed amendment of MCR 9.123 would update the attorney discipline process for reinstatement of short-term suspensions and allow for abatement or modification of a condition in certain circumstances. The Attorney Discipline Board and Attorney Grievance Commission submitted the proposal jointly.

A motion was offered and supported to support the concept of the proposed rule amendment but note that further amendments are needed to address timelines, forums and procedure/due process. The motion was approved.

ADM File 2018-31: Proposed Amendment of Rule 2 of the Rules Concerning the State Bar

The proposed amendment of Rule 2 of the Rules Concerning the State Bar of Michigan would update and expand the rule slightly to include reference to a member's email address.

A motion was offered and support to support the proposed amendment to Rule 2 with one amendment that attorneys be required to submit only one primary email address that can be used for electronic service and SBM license notifications. The motion was approved.

Legislation

Bail Bond Procedures

- **HB 4351** (LaGrand) Criminal procedure; bail; procedure for bail hearings and criteria a court must consider; amend. Amends sec. 6, ch. V of 1927 PA 175 (MCL 765.6).
- **HB 4352** (Peterson) Criminal procedure; bail; procedure a court must follow in imposing financial condition on pretrial release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6f to ch. V.
- **HB 4353** (Howell) Crimes; penalties; remove cases in which a court must impose a cash bond and penalties for misrepresentation on a financial disclosure form; provide for. Amends sec. 6a, ch. V of 1927 PA 175 (MCL 765.6a).
- **HB 4354** (VanSingel) Criminal procedure; bail; criteria a court must consider before imposing a financial condition of release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6e to ch. V.
- **HB 4355** (Neeley) Criminal procedure; bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

- **HB 4356** (Johnson) Criminal procedure; bail; authority for officer to issue appearance ticket; modify. Amends sec. 9c, ch. IV of 1927 PA 175 (MCL 764.9c).
- **HB 4357** (Brann) Criminal procedure; bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).
- **HB 4358** (Garrett) Criminal procedure; bail; data on specific number and type of bonds issued; require district court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6g to ch. V.
- **HB 4359** (Yancey) Criminal procedure; bail; data on specific number and type of bonds issued; require circuit court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6h to ch. V.
- **HB 4360** (LaFave) Traffic control; driver license; reference to surrendering license as condition of pretrial release; remove to reflect changes in code of criminal procedure. Amends sec. 311a of 1949 PA 300 (MCL 257.311a).
Action on this legislation was tabled.

OTHER REPORTS

American Bar Association (ABA) Report

No report was given.

SPECIAL PRESENTATIONS

Recognition of Outgoing Board Members

Richard L. Cunningham written and presented by Aaron V. Burrell
 Syeda F. Davidson written and presented by Kara R. Hart-Negrich
 Andrew F. Fink III written and presented by Joseph P. McGill
 Edward L. Haroutunian written and presented by Daniel D. Quick
 Michael S. Hohausser written and presented by B.D. "Chris" Christenson
 Victoria A. Radke written and presented by Dana M. Warnez

Recognition of President Jennifer M. Grieco

Mr. Barnes thanked Ms. Grieco for her years of service to the State Bar, especially the past year as President, and presented her with a plaque and scrapbook.

Ms. Grieco expressed her appreciation to the Board members and SBM staff for their assistance during her time on the Board.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Comments or Questions from the Public

Adjournment

The meeting was adjourned at 3:50 p.m.